

submission of representations and certifications by offerors. If allowed, the provisions of FAR 14.213 shall be followed.

[55 FR 13536, Apr. 11, 1990]

Subpart 315.5—Unsolicited Proposals

315.505 Content of unsolicited proposals.

(d) Certification by offeror—To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in FAR 15.504 resulting in an unfair advantage to an offeror, the principal official responsible for acquisition (or designee) shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as part of the resultant unsolicited proposal:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date:

Organization:

Name:

Title:

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

315.506 Agency procedures.

(a) The principal official responsible for acquisition is responsible for establishing procedures to comply with FAR 15.506(a).

(b) The principal official responsible for acquisition or his/her designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals. Contacts made outside the contracting activity shall be promptly coordinated with the principal official

responsible for acquisition or the designee.

315.506–1 Receipt and initial review.

(d) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the ground that they lack scientific merit.

315.509 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.509(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with FAR 15.504(b)(7):

The Government will attempt to comply with the "Use and Disclosure of Data" legend. However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

Subpart 315.6—Source Selection

315.602 Applicability.

(b) This subpart does not apply to contracts for architect-engineer services or contracts awarded to the Small Business Administration under section 8(a) of the Small Business Act.

315.604 Responsibilities.

(d) Personnel participating in the evaluation process must not discuss or

reveal information concerning the evaluations except to an individual participating in the same evaluation proceedings, and then only to the extent that the information is required in connection with the proceedings. Divulging information during the evaluation, selection, and negotiation phases of the acquisition to offerors or to personnel not having a need to know could jeopardize the resultant award. Therefore, the contracting officer must instruct personnel participating in the evaluations to observe these restrictions and insure that all personnel understand that unauthorized disclosure of information, no matter how innocent, could compromise the acquisition process and is prohibited.

(e) Only the contracting officer or his/her authorized representative within the contracting office shall conduct discussions with offerors relative to any aspect of the acquisition.

315.605 Evaluation factors.

(e) The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated. Prospective offerors rely upon the evaluation criteria in the solicitation in developing proposals, and they must be assured that the evaluation is conducted in accordance with those criteria. All personnel involved in the evaluation process must make sure that the evaluation criteria contained in the solicitation are the *only* criteria used in conducting the evaluation. See FAR 15.406-5(c) and 315.406-5(c) for detailed guidance on evaluation criteria.

315.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that offerors' clarifications are in writing.

(c)(3) The chief of the contracting office is authorized to make the written determination permitting a correction of a mistake in a proposal.

315.608 Proposal evaluation.

(a)(1) *Cost of price evaluation.* (See 315.608-77.)

(2) *Technical evaluation.* (See 315.608-75 and 76.)

(b) The determination required by FAR 15.608(b) shall be made by the chief of the contracting office.

[50 FR 23130, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 51 FR 44294, Dec. 9, 1986]

315.608-70 Technical evaluation plan.

(a) A technical evaluation plan may be required by the contracting officer, at his/her discretion, when an acquisition is sufficiently complex as to warrant a formal plan.

(b) The technical evaluation plan should include at least the following:

(1) A list of technical evaluation panel members, their organizations as well as a list of their major consulting clients (if applicable), their qualifications, and curricula vitae (if available);

(2) A justification for using non-Government technical evaluation panel members. (Justification is not required if non-Government evaluators will be used in accordance with standard contracting activity procedures or policies);

(3) A statement that there is no apparent or actual conflict of interest regarding any panel member;

(4) A copy of each rating sheet, approved by the contracting officer, to be used to assure consistency with the evaluation criteria; and

(5) A brief description of the general evaluation approach.

(c) The technical evaluation plan must be signed by an official within the program office in a position at least one level above the project officer or in accordance with contracting activity procedures.

(d) The technical evaluation plan should be submitted to the contracting officer for review and approval before the solicitation is issued. The contracting officer shall make sure that the principal factors relating to the evaluation are reflected in the evaluation criteria when conducting the review of the plan.

[50 FR 23130, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608-71 Technical evaluation panel.

(a) *General.* (1) A technical evaluation panel is required for all acquisitions